

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0105
Adjusted Gross Income Tax
Tax Period 2002-2003

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ISSUES

I. Adjusted Gross Tax-Imposition

Authority: 26 U.S.C.A. § 62; IC § 6-3-2-1(a); IC § 6-3-1-3.5(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-4.

The taxpayer protested the imposition of Indiana adjusted gross income tax.

II. Tax Administration- Ten Percent Negligence Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b).

The taxpayer protested the imposition of the ten percent negligence penalty.

Statement of Facts

The taxpayers are vendors of food and drinks at an annual festival. In a sales tax audit, the Indiana Department of Revenue (department) estimated the total sales of food and drinks at the festival for the years 2002-2004. The department also applied the estimated total sales figures to the taxpayer's 2002-2003 individual income taxes. This resulted in an assessment of additional adjusted gross income tax, interest, and penalty for the 2002-2004 tax period.

The taxpayer protested this assessment. A hearing was held and this Letter of Findings results.

I. Adjusted Gross Income Tax-Imposition

Discussion

Indiana imposes an adjusted gross income tax on the adjusted gross income of Indiana residents. IC § 6-3-2-1(a). Indiana adjusted gross income is calculated by starting with the federal adjusted gross income and making certain modifications. IC § 6-3-1-3.5(a). The federal adjusted gross income calculation begins with the inclusion of all of the taxpayers' income. 26 U.S.C.A. § 62.

Notices of proposed assessments are prima facie evidence that the department's claim for unpaid taxes is valid. The taxpayer has the burden of proving that the department incorrectly imposed the assessment. IC § 6-8.1-5-1(b). Taxpayers are required to keep adequate books and records so that the department can determine the proper tax owed to the state. IC § 6-8.1-5-4.

The taxpayers did not have adequate records to support the calculation of their federal gross and adjusted gross income. Since the Indiana calculation flows from the federal calculation, they did not have adequate records to support the calculation of their Indiana adjusted gross income and resulting tax. Therefore, the department's investigation added the sales tax audit's estimated total sales to the taxpayers' Indiana adjusted gross income. This resulted in the assessment of additional Indiana adjusted gross income tax. The taxpayer protested this additional tax.

Concerning the sales and use tax audit, the department notes that, aside from poor record keeping, the audit found evidence of unreported sales and transactions. The taxpayer now argues that the amount originally assessed was too great. The taxpayer suggested that the department could make a better estimate by applying the 2005 total sales amounts to the three years covered by the audit. The taxpayer did maintain 2005 records; the amount of 2005 sales is approximately 40 percent lower than the estimated sales for the tax period. While the Department agrees that the 2005 records *could* provide a reasonable basis for projecting the estimated periods, the department declines to make such a factual determination. The administrative review process is not the forum for making such a numerical determination based solely on taxpayer's unexamined, unchallenged assertion. However, the taxpayer has met its burden of demonstrating that the estimated sales amounts should be reconsidered.

The adjusted gross income tax additional liabilities were based on the sales and use tax audit's proposed assessments. Therefore, the reevaluation of these estimates of total sales during the sales and use tax audit period will impact the taxpayers' adjusted gross income tax liability

Finding

The taxpayers' protest to the adjusted gross income tax assessment is sustained to the extent that the supplementary audit review adjusts the taxpayers' sales tax assessment.

II. Tax Administration- Ten Percent Negligence Penalty

Discussion

The taxpayer protested the imposition of the ten percent (10[percent]) negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by

the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

During the period of the audit, the taxpayer ignored the law and the department's` instructions for the payment of adjusted gross income tax and maintenance of adequate records. The taxpayer's inattention to these duties resulted in the tax assessment. These breaches of the taxpayer's duty constituted negligence.

Finding

The taxpayer's protest is denied.

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